(18,718.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 490.

RIBAS Y HIJO, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

INDEX.

	Original.	Print.
Caption	1	1
Petition	2	1
Marshal's return of service of petition	4	2
Answer	5	3
Order submitting cause	9	4
Affidavit of mailing copy of petition to Attorney General	10	5
Opinion	11	5
Petition for rehearing	16	7
Order taking petition for rehearing under advisement	20	8
Opinion on petition for rehearing	21	9
Judgment	23	9
Petition for appeal	24	10
Order allowing appeal	25	10
Assignment of errors	26	11
Order as to appeal bond	29	12
Bond on appeal	30	12
Clerk's certificate	33	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1903.

1 THE UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

At a regular term of the district court of the United States of America, within and for the district of Porto Rico, begun and held at the court-rooms in the city of Ponce on the second Monday in January being the 14th day of that month, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth—present, the Hon. Wm. H. Holt, district judge. Among the proceedings had were the following to wit:

J. RIBAS E HIJO
vs.
THE UNITED STATES. } Claim # 78.

2 Be it remembered that heretofore, to wit, on the sixth day of October A. D. 1900 came the plaintiffs by their attorney and filed in the clerk's office of this court a petition in this cause, which said petition is clothed in words and figures following, to wit:

Petition.

In the District Court of the United States for Porto Rico.

J. RIBAS É HIJO
against
THE UNITED STATES.

J. Ribas e Hijo a company incorporated and organized under the laws of the Kingdom of Spain having an office and doing business at the city of Vigo, Spain, and at the city of Ponce Porto Rico respectfully shows to this honorable court:

First. That said company on the 25th day of July 1898 and ever since thereafter has been and now is the sole owner of a seagoing vessel known by the name: "Paz."

Second. That on or about the 28th day of July 1898 the United States by its duly authorized agents, that is to say: the officers of the quartermaster's department of the army, had employed the said vessel "Paz" for the use of the said United States as a storage
3 vessel for coal for the space of time of twelve months and two weeks, that is to say, beginning from on or about the said 28th day of July 1898 and up to on or about the 12th day of August 1899. That the said owners of the said vessel never have received from the United States or its agents anything in payment for the lease use and occupation of said vessel. That demand for payment has been made upon said officers and through the War Department of the United States and that such payment has been refused.

Third. That the value of the lease use and occupation of said

vessel for said space of time is the sum of ten thousand dollars United States currency.

For which sum said company now sues and prays judgement upon the law and facts alleged.

EDUARDO ARRUZA,
Agente de J. Ribas e Hijo.
CHAS. M. BOERMAN,
Attorney and Solicitor for the Petitioners.

UNITED STATES OF AMERICA, }
District of Porto Rico, } ss:

4 Eduardo Arruza being duly sworn says that he is agent of the company J. Ribas é Hijo at the city of Ponce, Porto Rico. That all the allegations in the foregoing petition are true in fact and substance.

EDUARDO ARRUSA.

Sworn to before me this 6th day of October 1900.

[SEAL.] GEO. W. LIEBERTH, *Clerk,*
By MANUEL CORTADA,
Deputy Clerk.

And afterwards, to wit: on the 10th day of October in the year last aforesaid came the marshal of said district to whom the said petition was directed for service and returned the same into the clerk's office of the court aforesaid, with his proceedings endorsed thereon clothed in the words and figures following to wit:

Marshal's Return.

UNITED STATES OF AMERICA, }
The District of Porto Rico. }

I received this petition October 9 1900 and executed it by delivering a copy of the same to N. B. K. Pettingill U. S. district at-
5 torney for the district of Porto Rico, on October 10 1900.

E. S. WILSON,
U. S. Marshal.

And afterwards to wit: on the 10th day of January A. D. 1901 came the defendant in this case by its attorney and filed in the clerk's office of the court aforesaid its certain answer in this cause which said answer is clothed in words and figures following to wit:

In the District Court of the United States for the District of Porto Rico.

J. RIBAS Y HIJOS
vs.
THE UNITED STATES. } Statutory Suit of Damages.

Comes N. B. K. Pettingill, United States attorney for said district of Porto Rico and on behalf of the said United States making answer to the petition heretofore filed by the plaintiff herein says, that as to the allegations of the first paragraph of said petition the United States is entirely ignorant of such ownership, except as made known by the plaintiffs themselves, and calls upon the plaintiffs for strict proof of the same. And the defendant further says
6 that the first information received or obtained by it of the alleged claim of said petitioners to the ownership of the vessel called "Paz" was in the claim filed on behalf of said petitioners in the War Department in the month of February, A. D. 1900; that previous thereto, to wit: in the month of April, A. D. 1899, the agents of the United States, acting under instructions from the said War Department, had made inquiries at the port of Ponce where said vessel was as to the ownership thereof for the purpose of delivering her to her owners; but such agents being unable to ascertain the names of such owners, gave notice to the consignees and to the captain, who also claimed to be owner in whole or in part, that the United States was ready to deliver said vessel to the captain or owners upon the relinquishment by them of any claim against the United States for damages because of the detention or use of said vessel, which offer was refused by the said captain thereof; and that the United States was at all times thereafter ready and will-
7 ing to make such delivery upon the terms aforesaid up to the time of the abandonment of said vessel by the said agents of the United States on account of such refusal; and that subsequent to the tender of delivery of said vessel to her captain and his refusal to received the same as aforesaid and the consequent abandonment thereof by the United States, the port of Ponce, where said vessel was lying, was swept by the disastrous hurricane of August 8, 1899, and as a result thereof said vessel was wrecked by the elements and rendered practically worthless.

Answering the second paragraph of said petition defendant admits that said vessel was used by the quartermaster's department, U. S. Army, as a storage vessel from the date alleged to about the end of the month of April, 1899, but not longer; and that the United States has paid no person for the use thereof but denies that it owes any person therefor. The United States on the contrary avers that on or about said 28th day of July, A. D. 1898, the said vessel
8 called "Paz" was captured by its military forces in the said port of Ponce, the said United States being at the time in a state of war with the Kingdom of Spain and its army having invaded the island of Porto Rico which was then a dependency of said kingdom, and thereupon the said military and naval forces of

the United States rightfully seized and took possession as an act of the war of the said vessel called "Paz" together with other vessels as enemies' property, said vessels then lying within the limits of said port of Ponce, and had the right as such act of war to use and confiscate the same for the reason aforesaid, if it had elected so to do; that the said United States was on said 28th day of July, A. D. 1898, and for some time thereafter at war as aforesaid with the Kingdom of Spain and the said petitioners and the captain of said vessel called "Paz" were at the time of said seizure thereof subjects of the said Kingdom of Spain; and that the subsequent tender of return of said vessel to her owners by said United States was purely an act of grace and not of duty or obligation on the part of
9 the United States.

Answering the third paragraph of said petition, the United States says that it is ignorant as to what might have been the value of the alleged use and occupation of said vessel but denies any liability for the payment of the same for the reasons aforesaid.

N. B. K. PETTINGILL,
United States Attorney.

UNITED STATES OF AMERICA,
District of Porto Rico.

N. B. K. Pettingill being duly sworn says that he is the attorney of the United States for the district aforesaid, and that the matters and things in the foregoing answer set forth are true to the best of his knowledge, information and belief.

N. B. K. PETTINGILL.

Sworn to before me this 10″ day of January, 1901.

GEO. W. LIEBERTH,
Clerk U. S. District Court.

And afterwards to wit, on the 22nd day of January of the year last aforesaid at a regular term of the said court an entry was made upon the journal of said court in said cause, which entry is clothed in words and figures following:

Entry.

This cause coming on for hearing parties herein announced ready the evidence was heard by the court and cause submitted.

10 And afterwards to wit, on the 26″ day of January of the year aforesaid came the plaintiffs in this case by their attorney and filed in the clerk's office of the court aforesaid a copy of the petition heretofore filed in said cause and an affidavit of service endorsed thereon which said affidavit is clothed in words and figures following to wit:

U. S. OF AMERICA, }
District of Porto Rico, } *ss:*

Rafael A. Sacarello being duly sworn says that on the 8" day of October 1900 he has mailed through the United States mail from the city of Ponce to the Attorney General of the United States at Washington a petition of which the within is a copy.

RAFAEL A. SACARELLO.

Sworn to before me this 26th day January 1901.

RICARDO NADAL, *Clerk.*
A. AGUAYO, *D'p'ty.*

And afterwards to wit on the 9th day of April A. D. 1901 an entry was made upon the order book of said court in said cause
11 which said entry is clothed in words and figures following, to wit:

In the United States District Court, District of Porto Rico, April 8th, 1901.

J. RIBAS Y HIJOS, Plaintiff, }
vs.
THE UNITED STATES, Defendant. }

Opinion.

This is an action for ten thousand dollars for the use of a vessel named "Paz," for the storage of coal for twelve months and two weeks, to wit: from July 28th, 1898 to August 12th, 1899. The declaration avers that the use was by the quartermaster's department of the army. The answer admits the alleged use from July, 1898, to May, 1899, but denies liability upon the ground that the vessel was enemy's property and was so seized by the military forces of the United States.

From the admissions in the pleadings and the evidence, these facts appear, to wit:

That the plaintiff in July 1898, was either a Spanish corporation or firm composed of Spanish subjects, and owned the "Paz,"
12 which was a merchant vessel and was in the port of Ponce when that city was captured by the United States Army and Navy on July 28th, 1898, and it was then taken for the use of the quartermaster's department. It was so used until in April, 1899, when the War Department ordered its return to the owner if all claim for use or damage for detention was waived. This conditional return was refused by the captain, who claimed to be a part owner, and who, with his crew, left the vessel.

There is also evidence tending to show that some time after this and probably in April, 1899, the consignees of the vessel were notified that it was at their disposal and that the Government authorities were about to discharge those in care of it, and they were requested to put some one in charge, but they declined to do so and

the vessel was abandoned. In the hurricane following of August, 1899, it was wrecked.

It was never in naval custody and no steps were ever taken to condemn it as a prize. It was, however, when seized a Spanish
13 vessel; it floated the Spanish flag; its captain and crew were Spanish subjects, as was also its owner. It did not come within any of the declared exemptions from seizure set forth in the proclamation of the President of the United States of April 26th, 1898, and a claim filed in the War Department in February, 1900, by the plaintiffs for its use and value was rejected.

From this findings of facts, these legal conclusions are reached, to wit:

The United States being at war with Spain when this seizure was made, every individual of the one country was in legal hostility to every individual of the other and all of the property of the one belligerant was to be considered as hostile as to the other. The Congress of the United States had by its act of April 25th, 1898, declared that war existed from April 21st, 1898, and when this vessel was seized it was enemy's property and as such liable to capture. Property may be hostile and liable to seizure in war from its character; it may be contraband, but generally the character of property follows the character of its owner. It is hostile if he be hostile.

14 It is true this vessel was private property, and not being used for hostile purposes. It was not a legitimate subject of capture by reason of any pecul-arity of its own, but it was, nevertheless, the property of an enemy, and as such liable to be seized and used to carry on the war and meet its expense, just as troops in the enemy's country may be subsisted by forced requisitions.

Halleck's Intern. Law, p. 356.

The former and stern rule was that anything might be done by a belligerant to weaken his adversary, and it has been vigorously urged by some distinguished writers upon the subject that this shouid be the rule because such is the object of war: but in recent years the rule has been so far modified that generally the property of non-combatants upon land is not liable to be seized as booty nor is pillage permissable; and our own Government has upon several occasions tried to embody into the law of nations the exemption from capture of all private property upon land, not contraband, and also merchant vessels; but this policy has not met with gen-
15 eral acceptance by the civilized nations of the world.

It may properly be said that as an abstract right, as the *strictum jus*, private movable property on land of an enemy is subject to seizure and this was the former custom; but the modern usage is, with some exceptions, to exempt it.

The case in hand, however, is the use of an enemy's property by the war power for war purposes. In the language of an eminent publicist it is one of those "special cases dictated by the necessary operation of war." (United States *vs.* Alexander, 69 U. S.) It is like the using temporarily for war purposes buildings or lands of

the enemy in invaded territory. There is no constitutional limitation of the war power; and while international law limits the subjects of capture, yet as to the necessity for it or for use of the enemy's property, the war power must, to some extent, necessarily judge. Individual hardship may result: it always does from war, but the province of the court is not to make but to declare
16 the law, and the conclusion is that no relief can be granted.

It is therefore ordered that this action be dismissed at the cost of the plaintiff- and the parties are hence dismissed.

WM. H. HOLT, *Judge.*

And afterwards to wit: on the 23rd day of April of the year last aforesaid came the plaintiffs by their attorney and filed in the clerk's office of the court aforesaid their certain petition for rehearing in this case, which said petition is clothed in words and figures following to wit:

Petition for Rehearing.

In the United States District Court, District of Porto Rico.

RIBAS Y HIJO
vs.
THE UNITED STATES.

The petition of Ribas y Hijo, the above-named complainants, shows:

17 That on or about the 6th day of September 1900, the complainants herein presented their bill to this honorable court and thereby set forth that The United States, the defendant herein, owe them the sum of ten thousand dollars for the use and occupation of a vessel named "Paz."

That the defendant herein has filed its answer; that thereupon issue having been joined and witnesses examined and the proof closed, after argument thereon before your honor a decree and finding of fact and of law were pronounced on the 8th day of April, 1901, whereby your honor decreed that the use and occupation of said vessel was a necessity of war and that therefore no payment could be made for it, and the complainants were dismissed, after which said decree was found and entered, and which said decree your orator humbly insists is erroneous and ought to be reviewed, reversed and set aside for the following apparent errors:

1st. That necessity of war which need not be paid and indemnified for is only an immediate necessity, as during a battle or siege, but does not include every class of private property which may be used for whatever purpose.

18 2nd. That the court did not take judicial notice of the fact that on the 12th of August, 1898, by the signing of the protocol of peace and by the proclamation of the President of the United States of America all hostilities ceased and the war was then thereby ended. That the evidence and the court's findings of fact show that

the use and occupation of the vessel for storage of coal continued after that time and up to the first of May, 1899, long after cessation of hostilities — of the establishment of peace.

That therefore, even if up to the 12th of August, 1898, there existed any necessity of war, it ceased on that date, and from that date on it was a use and occupation with the tacit understanding by both parties of a payment therefor *quantum meruit*.

In consideration whereof, and forasmuch as such errors and imperfections appear on the record of the case and in the body of said decree, and there is no proof to uphold any claim of necessity of war after the 12th day of August, 1898, your orator hopes that the said decree will be reversed and set aside.

19 To the end, therefore, that the defendant may show cause, if it can, why your orator should not have the relief hereby prayed, and that for the reasons and under the circumstances aforesaid, the said decree may be reversed, reviewed and set aside, and that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process by an order requiring the said defendant to show cause why the petition of your orator should not be granted, and your orator will ever pray.

C. M. BOERMAN,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico, } *ss:*

Charles M. Boerman, under oath, says that the allegations of fact contained in the foregoing petition are true in fact and in substance.

C. M. BOERMAN.

Sworn to and subscribed before me this 23rd day of April, 1901.

RICARDO NADAL, *Clerk,*
By SAMUEL SALOMAN, *Deputy.*

20 And afterwards to wit on the 29th day of April of the year last aforesaid an order was entered upon the order book of said court in said cause which said order is clothed in words and figures following to wit:

Order.

In the United States District Court, District of Porto Rico.

RIBAS Y HIJO
vs.
THE UNITED STATES. } Order.

Now comes Ribas y Hijo by their attorney C. M. Boerman Esqr., and presented and filed their verified petition for a rehearing herein and moved that the same be granted; the decree herein be reversed and set aside and that they have judgment herein. The United

States district attorney objected thereto and by consent the same is now heard and submitted to the court and time taken for judgment.

April 23, 1901.

WM. H. HOLT, *Judge.*

21 And afterwards to wit: on the 30th day of April in the year last aforesaid an order was entered upon the order book of said court in said cause which said order is clothed in words and figures following to wit:

Order.

In the United States District Court, District of Porto Rico, April 27, 1901.

RIBAS Y HIJOS
v.
THE UNITED STATES.

A rehearing is asked upon the ground that the court has found as a matter of fact that the use continued until in April 1899 and as the protocol, followed by the President's proclamation, was dated August 12th, 1898, the complainants should recover on a *quantum meruit* the value of the use of the vessel between those dates.

This was a seizure in time of war and not in time of peace.

It was, as has been said, a special case arising from the necessary operation of war, and the war power of the Government con-

22 cluded it was necessary to take and use the property.

Even conceding that the seizure did not terminate all right of the Spanish owner in the property or to any use of it, yet the protocol and proclamation did not end the war. The protocol worked a mere truce. The President had not the power to terminate the war by treaty without the advice or consent of the Senate of the United States. If a treaty be silent as to when it is to become effective, the weight of authority is that it does not become so until ratified, and this was not done until in April 1899, and the war did not end by treaty until then, and all the use made by the Government of the vessel was justified by the rules of law and international law without compensation.

The motion is overruled and rehearing denied.

WM. H. HOLT, *Judge.*

And afterwards to wit: on the 25th of May of the year last

23 aforesaid an entry was made upon the journal of said court in said case which said entry is clothed in words and figures following to wit:

Entry.

The case of Ribas and Son *vs.* The United States having been heretofore tried before this court as provided by the statutes and the court having rendered his opinion and decision in favor of the de-

fendant herein upon the issue joined between the parties, it is now adjudged and considered that the defendant United States do go hence without day and do have and recover from the plaintiffs J. Ribas and Son a corporation and etc. its costs in this behalf laid out and expended to be taxed by the clerk of this court and that execution do issue therefore.

And afterwards to wit: on the same day and year last
24 aforesaid came the plaintiffs by their attorney and filed in the clerk's office of the court aforesaid their certain petition for appeal in this case which said petition is clothed in words & figures following to wit:

Petition for Appeal.

In the United States District Court, District of Porto Rico.

RIBAS Y HIJO
vs.
THE UNITED STATES.

To the Honorable William H. Holt, judge of the United States district court for the district of Porto Rico, presiding therein:

The above-named complainants and petitioners in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause under date of the 25th day of May, 1901 wherein and whereby their petition was dismissed, do hereby appeal to the United States Supreme Court from said order and decree, and particularly from that part of it which decrees the dismissal of said complaint,
25 and for the reasons set forth in the assignment of errors, which is filed herewith, and they pray that this, their petition for their said appeal may be allowed, and that the transcript of the record, proceeding, and papers, duly authenticated, and upon which said order was made may be sent to the United States Supreme Court.

This May 25th A. D. 1901.

C. M. BOERMAN,
Solicitor for Ribas y Hijos and of Counsel.

And thereupon on the same day and on the said petition for appeal an order was made and entered upon the journal of the said court which said order is clothed in words and figures following to wit

Order.

The foregoing petition for appeal is granted and the claim of appeal therein made is allowed. Done in open court this May 25th, A. D. 1901.

WM. H. HOLT,
Judge of the United States District Court, District of Porto Rico, and Presiding Therein.

26 And afterwards to wit: on the same day of the year last aforesaid came the plaintiffs in this case by their attorney and filed in the clerk's office of the court aforesaid their assigment of errors in this case which said assignnment of errors is clothed in words and figures following to wit:

Assignment of Errors.

In the United States District Court, District of Porto Rico.

RIBAS Y HIJO
v.
UNITED STATES.

Now come the complainants in the above-entitled cause and file the following assignment of errors upon which they will rely: The United States district court for the district of Porto Rico which court entered the decree of dismissal of complainants' petition in said cause, erred as follows:

First.

In dismissing the said suit and entering a final decree therein in favor of the United States and against the petitioners.

27 Second.

In not making, rendering and entering a decree in favor of said Ribas y Hijo, the petitioners, and against the United States, sustaining the validity of the claims sued on.

Third.

In holding and deciding that the taking of the property of complainants by the War Department and use of it was a necessity of war.

Fourth.

In holding and deciding that necessities of war were continuing after the 12" day of August, 1898, at which date the protocol of peace was signed by the representatives of the United States and Spain, and the President of the United States issued a proclamation ordering that all hostilities cease, by which protocol and proclamation the actual war, so far as the necessities of war were concerned, was then thereby ended.

Fifth.

28 In holding and deciding, contrary to the army regulations of the United States Army, which provide that no private property of the enemy should be taken without compensation, that the army was justified in using this property of petitioners without compensation.

Sixth.

In holding and deciding that the use and occupation of these complainants' vessel was the use of the enemy's property by the war power for war purposes.

Seventh.

In holding and deciding that the necessity of war held by international law as justifying the seizure and occupation of the enemy's property, includes not only such necessities which are immediately concerning the movements of an army or operations in a battle or siege, but all kinds of use of private property by the war power at any time and on any occasion during the war.

Therefore, the said Ribas y Hijo, complainant- in error, pray that the decree of the district court of the United States for the
29 district of Porto Rico be reversed and that said district court be directed to grant a new trial of said cause.

C. M. BOERMAN,
Attorney and Solicitor for Complainants in Error, Complainants in the Lower Court, and of Counsel.

And afterwards to wit: on the 24th day of May in the year A. D. 1902 an entry was made upon the journal of the court aforesaid in said cause which entry is clothed in words & figures following to wit:

Entry.

It is hereby ordered that the plaintiffs give bond in the sum of one thousand dollars for the purpose of appeal to be taken by the clerk of this court.

And afterwards to wit on the same day and year last aforesaid came the plaintiffs by their attorney and filed in the clerk's office of said court their certain bond for appeal in said cause which bond is clothed in words and figures following to wit:

Bond.

30 In the United States District Court, District of Porto Rico.

J. RIBAS Y HIJO
vs.
THE UNITED STATES.

Know all men by these presents that we Ribas y Hijo a firm composed of José Ribas and his son doing business in Vigo, Kingdom of Spain, as principals, and Eduardo Arrusa of Ponce and Bartolomé Gonzalez of the same city, Porto Rico, as sureties, are held and firmly bound unto the United States of America in the full and just sum of a thousand dollars to be paid to said United States of America, to which payment well and truly to be made we bind ourselves, our

heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24" day of May, one thousand nine hundred and two.

Whereas lately at a session of the United States district court for the district of Porto Rico in a suit pending in said court be-
31 tween the said Ribas y Hijo complainants and The United States, defendant, a decree was rendered against the said Ribas y Hijo and the said Ribas y Hijo having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree of the aforesaid suit and a citation directed to the said United States is about to be issued citing and admonishing them to be and appear at the United States Supreme Court to be holden at Washington, District of Columbia.

Now the condition of the above obligation is such that if the said Ribas y Hijo shall prosecute the said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good then the above obligation to be void, otherwise to remain in full force and virtue.

J. RIBAS É HIJO, [ ]
Per EDUARDO ARRUZA.
EDUARDO ARRUZA. [ ]

B'MÉ GONZALEZ. [ ]

32 On this 24" day of May 1902 appeared before me Eduardo Arruza and Bartolome Gonzalez personally known to me and acknowledged that they executed the foregoing instrument.

RICARDO NADAL, *Clerk*,
[SEAL.] By A. AGUAYO, *D. C.*

U. S. OF AMERICA,
District of Porto Rico, } ss:

Eduardo Arruza and Bartolomé Gonzalez each of them being duly sworn says for himself: I am a householder of Ponce Porto Rico and I am worth more than a thousand dollars in visible property in the island of Porto Rico over and above my legal liabilities.

B'MÉ GONZALES.
EDUARDO ARRUZA.

[SEAL.] Sworn to before me this 24" day of May 1902.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *D. C.*

Approved this 24th day of May 1902.

RICARDO NADAL, *Clerk*,
By A. AGUAYO, *D'y Clerk.*

33 I Ricardo Nadal clerk of the United States district court for the district of Porto Rico do hereby certify that the foregoing is a true and correct transcript of the proceedings, petition, returns answer, findings of the court orders thereon, petition for rehearing, order thereon final judgment, petition for appeal, assignment of errors, order allowing appeal, and bond in the case therein stated.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Ponce this 20th day of June, A. D. 1902.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk U. S. District Court of Porto Rico,
By A. AGUAYO, *Deputy Clerk.*

Endorsed on cover: File No. 18,718. Porto Rico D. C. U. S. Term No. 490. Ribas y Hijo, appellant, *vs.* The United States. Filed October 29, 1902.

13862

13864

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 151.

RIBAS Y. HIJO,
Appellant,

vs.

THE UNITED STATES.

BRIEF FOR THE APPELLANT.

Statement.

This is an appeal from an order and decree of the United States District Court for the District of Porto Rico dismissing the action for $10,000, for the use by the United States Government of a vessel belonging to the appellant. The facts are clearly stated in the opinion of the court below:

> "This is an action for ten thousand dollars for the "use of a vessel named 'Paz,' for the storage of coal "for twelve months and two weeks, to wit: from "July 28th, 1898, to August 12th, 1899. The decla- "ration avers that the use was by the quartermaster's "department of the army. The answer admits the "alleged use from July, 1898, to May, 1899, but denies "liability upon the ground that the vessel was enemy's "property and was so seized by the military forces of "the United States.

"From the admissions in the pleadings and the "evidence, these facts appear, to wit:

"That the plaintiff in July, 1898, was either a "Spanish corporation or firm composed of Spanish "subjects, and owned the 'Paz,' which was a mer- "chant vessel, and was in the port of Ponce when that "city was captured by the United States Army and "Navy on July 28th, 1898, and it was then taken for "the use of the Quartermaster's Department. It was "so used until in April, 1899, when the War De- "partment ordered its return to the owner if all "claim for use or damage for detention was "waived. This conditional return was refused by "the captain, who claimed to be a part owner, and "who, with his crew, left the vessel.

"There is also evidence tending to show that some "time after this, and probably in April, 1899, the con- "signees of the vessel were notified that it was at their "disposal, and that the Government authorities were "about to discharge those in care of it, and they "were requested to put some one in charge, but they "declined to do so, and the vessel was abandoned. "In the hurricane of August, 1899, it was wrecked.

"It was never in naval custody, and no steps were "ever taken to condemn it as a prize. It was, how- "ever, when seized, a Spanish vessel; it floated the "Spanish flag; its captain and crew were Spanish "subjects, as was also its owner. It did not come "within any of the declared exemptions from seizure "set forth in the proclamation of the President "of the United States of April 26th, 1898, and a claim "filed in the War Department in February, 1900, by "the plaintiffs for its use and value was rejected." (Rec., pp. 5, 6.)

From these findings of fact the following legal conclusions were reached by the Court below:

"The United States being at war with Spain when "this seizure was made, every individual of the one

" country was in legal hostility to every individual of " the other, and all of the property of the one belligerent " was to be considered as hostile as to the other. The " Congress of the United States had by its act of April " 25th, 1898, declared that war existed from April 21st, " 1898, and when this vessel was seized it was enemy's " property, and as such liable to capture. Property " may be hostile and liable to seizure in war from its " character; it may be contraband, but generally the " character of property follows the character of its " owner. It is hostile if he be hostile.

" It is true this vessel was private property, and not " being used for hostile purposes. It was not a legiti- " mate subject of capture by reason of any peculiarity " of its own, but it was, nevertheless, the property of " an enemy, and as such liable to be seized and used " to carry on the war and meet its expense, just as " troops in the enemy's country may be subsisted by " forced requisitions.

" Halleck's Intern. Law, p. 356.

" The former and stern rule was that anything " might be done by a belligerent to weaken his adver- " sary, and it has been vigorously urged by some dis- " tinguished writers upon the subject that this should " be the rule because such is the object of war; but in " recent years the rule has been so far modified that " generally the property of non-combatants upon land " is not liable to be seized as booty nor is pillage per- " missible; and our own Government has upon sev- " eral occasions tried to embody into the law of nations " the exemption from capture of all private property " upon land, not contraband, and also all merchant " vessels; but this policy has not met with general ac- " ceptance by the civilized nations of the world.

" It may properly be said that as an abstract right, " as the *strictum jus*, private movable property on land " of an enemy is subject to seizure and this was the " former custom; but the modern usage is, with some " exceptions, to exempt it.

"The case in hand, however, is the use of an "enemy's property by the war power for war purposes. "In the language of an eminent publicist it is one of "those 'special cases dictated by the necessary opera- "'tion of war.' (United States *vs.* Alexander, 69 U. S.) "It is like the using temporarily for war purposes build- "ings or lands of the enemy in invaded territory. "There is no constitutional limitation of the war "power; and while international law limits the sub- "jects of capture, yet as to the necessity for it or for the "use of the enemy's property, the war power must, to "some extent, necessarily judge. Individual hardship "may result; it always does from war, but the prov- "ince of the court is not to make but to declare the "law, and the conclusion is that no relief can be "granted." (Rec., pp. 6, 7.)

It was therefore ordered that the action be dismissed at the cost of the plaintiff.

A petition for rehearing was then filed and granted and argued (Rec., p. 7). A motion to reverse the decree and to give judgment to the plaintiffs was overruled (Rec., p. 9), the court rendering the following second opinion:

"A rehearing is asked upon the ground that the "court has found as a matter of fact that the use con- "tinued until in April, 1899, and as the protocol, fol- "lowed by the President's proclamation, was dated "August 12th, 1898, the complainants should recover "on a *quantum meruit* the value of the use of the vessel "between those dates.

"This was a seizure in time of war, and not in time "of peace.

"It was, as has been said, a special case arising from "the necessary operation of war, and the war power of "the Government concluded it was necessary to take "and use the property.

"Even conceding that the seizure did not terminate "all right of the Spanish owner in the property or to

" any use of it, yet the protocol and proclamation did
" not end the war. The protocol worked a mere truce.
" The President had not the power to terminate the
" war by treaty without the advice or consent of the
" Senate of the United States. If a treaty be silent as
" to when it is to become effective, the weight of
" authority is that it does not become so until ratified,
" and this was not done until in April, 1899, and the war
" did not end by treaty until then, and all the use made
" by the Government of the vessel was justified by the
" rules of law and international law without compen-
" sation.

" The motion is overruled and rehearing denied."

The original petition was filed October 6, 1900; it was denied April 8, 1901; the order dismissing the motion to reverse the decree was filed April 27, 1901. This appeal was taken on May 25, 1901.

Specification of Errors.

The complainants allege as errors in the court below (Rec., pp. 11, 12):

" SEVENTH.

" In holding and deciding that the necessity of war
" held by international law as justifying the seizure
" and occupation of the enemy's property, includes not
" only such necessities which are immediately con-
" cerning the movements of an army or operations in a
" battle or siege, but all kinds of use of private property
" by the war power at any time and on any occasion
" during the war.

" FOURTH.

" In holding and deciding that the necessities of
" war were continuing after the 12th day of August,
" 1898, at which date the protocol of peace was signed
" by the representatives of the United States and Spain
" and the President of the United States issued a proc-
" lamation ordering that all hostilities cease, by which

" protocol and proclamation the actual war, so far as the
" necessities of war were concerned, was then thereby
" ended."

Jurisdiction.

The amount in controversy is $10,000 (Rec. p. 2, fol. 3). In Royal Insurance Company *vs.* Martin, No. 86, October Term, 1903, decided January 11, 1904, this Court held that under Section 35 of the Act of April 12, 1900, c. 191, 31 Stat. at L. 85, entitled "An act Temporarily to Provide Revenues and Civil Government for Porto Rico and for other purposes," and Section 702 of the Revised Statutes of the United States and under the Act of March 3, 1885, c. 355, 23 Stat. at L., 443, this Court will take jurisdiction in any case coming from Porto Rico involving $5,000, exclusive of costs.

The Act of March 3, 1887, Ch. 354, 24 Stat., 505, after providing in section 2 that the circuit court shall have concurrent jurisdiction with the Court of Claims in all suits against the United States for a sum exceeding $3,000, and not exceeding $10,000, provides in Section 9:

" That the plaintiff or the United States, in any suit
" brought under the provisions of this act, shall have
" the same rights of appeal or writ of error as are now
" reserved in the statutes of the United States in that
" behalf made, and upon the conditions and limitations
" therein contained."

R. S., Sec. 707, provides as follows:

" An appeal to the Supreme Court shall be allowed
" on behalf of the United States, from all judgments of
" of the Court of Claims adverse to the United States,
" and on behalf of the plaintiff in any case where the
" amount in controversy exceeds three thousand dol-
" lars or where the claim is forfeited to the United
" States by judgment of said court as provided in section
" one thousand and eighty-nine."

1386

Points.

1. IT IS AN UNDISPUTED RULE OF MODERN INTERNATIONAL LAW, EUROPEAN AND AMERICAN ALIKE, THAT THE PRIVATE PROPERTY OF THE CITIZENS OF AN INVADED TERRITORY OF THE ENEMY CAN NOT BE TAKEN WITHOUT COMPENSATION.

The object of war in modern times is no more, as it used to be in antiquity, pillage and plunder. No civilized power on earth now undertakes a war in order to plunder the property of citizens of another country. There is no court in the civilized world which would maintain such a purpose as lawful and permitted by the principles of international law. The practice of all civilized nations in all modern war has been to respect rights of private property of individual subjects and even of private property of the sovereign of an enemy country as that of an individual.

The object of war in modern times between civilized peoples, between whom alone international law can be said to prevail, is to decide some disputed question between two nations, which can not be decided otherwise than by a trial of force. Its only aim is through the application of superior force to bring the other side to submission as soon as possible. No damage to the interests of the individuals as citizens of an enemy country is intended. On the contrary, it has become the practice, as soon as a territory is invaded, for the army to assume the protection of the personal and property rights of the individual citizens of the invaded enemy territory. It is absurd to assume that the armies of invasion, who by the instructions and orders of the chiefs of their nation are intrusted with the responsibility of protection of property and personal rights, shall in the invaded territories themselves be allowed to infringe and violate those sacred rights. It would also be absurd to admit

for a moment that of all civilized nations the great Republic of the United States, founded upon principles of justice and uprightness, is the one which will not accept these humane rules of conduct of war and will permit plunder and pillage, this being the only name that can in our times be given to such acts as depriving a private citizen of his property without compensation simply because we are at war with the sovereign of his country.

Fortunately for the honor of humanity and of our country, the practice of this Government, as well as the instructions and military orders given by it, flatly contradict such a false assumption.

That the practice as stated has been absolutely accepted by all civilized nations will be shown by a few very short quotations from writers of authority on the Law of Nations in different countries and tongues.

Halleck "*International Law*," Vol. II, Ch. XXI, S. 12:

"Private property on land is now, as a general rule
"of war, exempt from seizure or confiscation; and this
"general exemption extends even to cases of abso-
"lute and unqualified conquest. Even where the con-
"quest of a country is confirmed by the unconditional
"relinquishment of sovereignty by the former owner,
"there can be no general or partial transmutation of
"private property, in virtue of any right of conquest.
"That which belonged to the Government of the van-
"quished passes to the victorious State, which also
"takes the place of the former sovereign, in respect to
"the right of eminent domain; but private rights,
"and private property, both movable and immovable,
"are in general unaffected by the operation of war,
"whether such operations be limited to mere military
"occupation, or extend to complete conquest. Some
"modern text writers—Hautefeuille, for example—
"contend for the ancient rule that private property
"on land is subject to seizure and confiscation. They
"are undoubtedly correct with respect to the general

13868

"*abstract right*, as deduced from the law of nature and "ancient practice; but while the general right con- "tinues, modern usage, and the opinions of modern "text writers of the highest authority, have limited "this right by establishing the rule of general exemp- "tion."

Says the great German jurist, Bluntschli, in the introduction to his "*Codified International Law*":

"On what principle can the pretended right (of tak- "ing by force private property of the enemy) be based? "On the absurd idea of antiquity that the enemy is a "being without rights? But the enemy is a human "being, and every human being has rights; or on the "idea that in war it is force only that regulates all? But "it is precisely the task of international law to re- "strain as much as possible the dominion of brutal "force. Or may be upon the idea that to injure your "enemy is a natural right in time of war? But particu- "lar individuals in their quality of particular individ- "uals are not enemies, and therefore private property "cannot be properly attacked. Or finally, upon the "accord of all the peoples? But the civilized peoples "have recognized that plunder of private property in "war is no other thing than robbery by force."

Our own Theodore D. Woolsey says in his *Introduction to to the Study of International Law* (Section 130):

"The property, movable as well as immovable, of "private persons in an invaded country is to remain "uninjured. But if the wants of the hostile army may "require, it may be taken by authorized persons *at a* "*fair value.*"

We quote from "*International Law*" by Freeman Snow, prepared and published by order of the United States Navy Department, and based upon lectures delivered at the United States Naval War College (Section 51):

"It is also to be noted that the right under military "government to appropriate the private property of "enemies for any purpose is to be regarded as materi- "ally modified where upon a permanent or continued "occupation an increased measure of protection to per- "sons and property has been guaranteed. So where a "commander in occupying a country or town of the "enemy has formally pledged the government to the "holding inviolate of the rights of property of individ- "uals, the seizure of private property by the military "authorities will not be recognized as legal."

In *Mrs. Alexander's Cotton*, 2 Wall., 404, this Court decided as follows:

"Being enemies' property, the cotton was liable to "capture and confiscation by the adverse party. *Prize* "*Cases*, 2 Black., 687. It is true that this rule as to "property on land has received very important quali- "fications from usage; from the reasonings of en- "lightened publicists; and from judicial decisions. It "may now be regarded as substantially restricted 'To "'special cases dictated by the necessary operation of "'war,' 1 Kent, 92, and as excluding, in general,' The "'seizure of the private property of pacific persons for "'the sake of gain,' 1 Kent, 93. The commanding gen- "eral may determine in what special cases its more "stringent application is required by military emer- "gencies, which considerations of public policy and "positive provisions of law, and the general spirit of "legislation, must indicate the cases in which its ap- "plication may be properly denied to the property of "non-contraband enemies."

A perusal of the decision shows that the seizure of cotton was justified on the ground that the mainstay of the Confederate States lay in their supply of cotton which was shipped abroad and there exchanged for munitions of war and other necessary supplies. It can hardly be said that the vessel "Paz" either by itself or as a part of the

merchant marine of Porto Rico was so essential to the Spanish Government in the prosecution of the war as to justify the United States Government in seizing it.

Finally in Lieber's "*Instructions for the Government of Armies of the United States in the Field*," known also as General Orders, No. 100, it is prescribed that private property of the enemy be respected and not taken without compensation, and that in case the owner be not absent the commanding officer shall give him a receipt in order that he may be thereafter indemnified:

> "SECTION 38. Private property, unless forfeited by "crimes or by offenses of the owner, can be seized only by "the way of military necessity, for the support or other "benefit of the army of the United States.
>
> "If the owner has not fled, the commanding officer "will cause receipts to be given, which may serve the "spoliated owner to obtain indemnity."

For the authority of General Orders, 100, above referred to, see Lawrence's International Law, Sec. 66; Dana's Wheaton's International Law, Sec. 16. The full text of the Order is to be found in the appendix to Glenn's *International Law*.

The same instructions are contained in General Orders, 101, July 13, 1898, signed by President McKinley:

> "Private property, whether belonging to individuals "or corporations, is to be respected, and can be confis- "cated only for cause. Means of transportation, such "as telegraph lines and cables, railways and boats, may, "although they belong to private individuals or corpo- "rations, be seized by the military occupant, but unless "destroyed under military necessity *are not to be retained.*
>
> * * * * * *
>
> "Private property taken for the use of the Army is "to be paid for when possible in cash at a fair valua- "tion, and when payment in cash is not possible, re- "ceipts are to be given."

In view of definite instructions to the United States armies not to seize private property without compensation there can be no doubt that in the seizure and use of the "Paz" there was implied a contract in fact that the United States would pay a just compensation for the use of the vessel.

For other authorities on this subject see the following:

Lawrence's Wheaton, *Elements of International Law*, Part 4, Ch. 2, Sec. 7.

Taylor's *International Law*, Secs. 536, 538.

Fiore, *Public International Law*, Sec. 1506 (Italian).

Frederic II. *Oeuvres*, Vol. 28, p. 91.

Bluntshli, *Moderne Kriege* (German) Sec. 152–157.

Bluntshli: *Codified International Law* (German, but translated into all languages and universally adopted), Sec. 655.

2. The Only Exception to the Foregoing Rule is That an Army During a War May Take or Destroy Property of Private Citizens in Case of Immediate Necessity for or on the Field of Battle, Encampment or Marches or for Battle or Siege.

The reason for such exception is that in these excepted cases the necessity is so strong and great, that it would defeat the whole object of war to refrain from infringing upon property rights of individuals. This exception is therefore very strictly taken and extends only to those cases in which a rigorous adherence to the law forbidding the infringement of private rights of property would be antagonistic to the conduct of war, and would impede its operations. But it can never be applied to any other class of cases, where the enforcement of the law respecting private property rights would not impair or impede the conduct of the war.

The above cited authorities all agree as to the extent of this exception.

The present case, however, does not fall within this exception, as no immediate necessity has been shown by the Government to have existed for the seizure of the vessel.

3. A Protocol Containing the Preliminaries of Peace and a Stipulation of Cessation of Hostilities Puts an End to the Right of Confiscation Even for So-called Necessities of War.

Confiscation is permissible only when the necessities of war make it urgent and impossible of avoidance in order that the conduct of battles and sieges may not be interferred with. When both parties agree to cease hostilities this reason for confiscation is gone. There can be no more excuse for a confiscation. Any confiscation of private property made after the preliminaries of peace have been established and cessation of hostilities agreed upon savors of robbery, which cannot find any excuse in a plea that the necessities of war or equally urgent considerations demand it.

Says Bluntshli, *International Law Codified*, Sec. 705:

> "The preliminaries of peace which serve as a basis
> "for a definitive peace and determine the essential stip-
> "ulations thereof, rest upon the same conditions and
> "in the limits to which they refer have the same ef-
> "fect as treaties of peace by which they are replaced."

Now as far as cessation of hostilities is concerned, and therefore the cessation of all necessities of war properly so called, the protocol of peace signed on the 12th day of August, 1898, and followed by the proclamation of the President of the United States ordering cessation of all hostilities, has certainly had the effect of rendering all necessities of war postponed, if not stopped forever, and therefore no con-

fiscation can be excused on account of necessities of war after and from that date.

Says Woolsey, *Introduction to Study of International Law*, Sec. 150:

> "The conclusion of a peace being one of the most "important acts of sovereignty, it is naturally carried "on with all the formalities with which the most solemn "treaties of other kinds are adjusted. Sometimes the "general basis on which the two parties will consent to "be at peace is laid down long before the details are "arranged. The first agreements are called prelimi-"naries, and a peace at this stage is a preliminary "peace in contrast with a definitive peace. The pre-"liminary peace is binding from the time it is signed."

One of the ways recognized by international law of putting an end to war is the cessation of hostilities and subsequent re-establishment of peaceful relations between the belligerents. Now if this is and always has been the recognized theory, how could it be for a moment maintained that a simultaneous solemn and public proclamation of cessation of hostilities and acceptance of a basis of a treaty of peace will not have the same effect? It is quite clear that as far as this point is concerned the protocol and proclamation of the President of the United States had the same effect as a definitive treaty of peace. The "necessities of war" disappeared with the virtual cessation of the war.

It is submitted, therefore, that, even if the seizure of the vessel was justified, the use of the same after the signing of the preliminaries of peace, and the proclamation by the President of a suspension of hostilities (August 12, 1898, 30 Stat., 1780), was not justified under the plea of temporary or military necessity. While the President may not declare war, or make a definitive treaty of peace, he does possess, as commander-in-chief of the Army and Navy, the power to end the war.

It is within the judicial knowledge of the Court that General Miles, on entering Porto Rico, issued a proclamation assuring the population that the Government of the United States guaranteed to all inhabitants full protection of their persons and property.

Conclusion.

It is respectfully submitted in conclusion that the implied contract for the payment for the use of the vessel cannot be avoided by pleading that the seizure of the vessel was for temporary and military uses; at any rate, not after the date of the protocol.

The order and decree of the court below should be reversed and a new trial granted.

Respectfully submitted,

CHARLES BOERMAN,

Attorney for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

RIBAS Y HIJO, APPELLANT,
v.
THE UNITED STATES. } No. 151.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action at law instituted in the district court of the United States for Porto Rico, by Ribas y Hijo, "a company incorporated and organized under the laws of the Kingdom of Spain, having an office and doing business in the city of Vigo, Spain, and the city of Ponce, Porto Rico" (R. I.), seeking to recover $10,000 for the use of the seagoing merchant vessel *Paz*, seized by the Army and Navy in the port of Ponce, July 28, 1898, and used by the military authorities until the following April, when the War Department ordered its return to the owner if all claim for use or damage

for detention were waived. This conditional return was refused by the captain, who claimed to be part owner, and who, with the crew, left the vessel. Later in the month of April the consignees were notified that it was at their disposal. They were requested to put some one in charge, but declined; thereupon the vessel was abandoned. In August following it was wrecked by hurricane. (R., 5, 6.)

The vessel was never in naval custody and no steps were taken to condemn it as a prize. When seized it was a Spanish vessel, floated the Spanish flag, and its captain, crew, and owner were Spanish. It did not come within any of the declared exemptions from seizure set forth in the proclamation of the President. A claim was filed with the War Department for its use, and rejected (R., 6).

The trial court held the seizure and use of the property for military purposes proper and dismissed the suit. Judgment was entered April 9, 1901 (R., 5–7); thereafter a petition for rehearing was overruled and final judgment entered; appeal allowed and assignment of errors filed May 25, 1901 (R., 9, 10, 11); no other steps were taken until May 24, 1902, when plaintiffs were ordered to give bond on appeal. The record was certified by the clerk of the trial court on June 20, 1902, and filed in this court October 29, 1902 (R., 14). It contains no citation.

The act of March 3, 1887, commonly called the Tucker Act (24 Stats., 505, chap. 359), provides—

That the Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable. * * *

SEC. 2. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. * * *

SEC. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, *and in the district where the plaintiff resides.* Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, etc.

The act of Congress of April 12, 1900 (31 Stats., c. 191, p. 77), entitled "An act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes," provides—

> SEC. 34. That Porto Rico shall constitute a judicial district to be called "The district of Porto Rico." * * * The district court for said district shall be called the district court of the United States for Porto Rico * * * and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court.

ARGUMENT.

The Appeal was not Perfected in Time.

The appeal was allowed by the trial court on the 25th day of May, 1901 (R., 10), during the term of this court which commenced October, 1900. The record was filed here on the 29th of October, 1902. An entire term was begun and finished after the appeal was allowed and before the record was filed.

After the expiration of the term immediately succeeding an appeal, it has no further vitality.

Green v. *Elbert* (137 U. S., 615, 621);
Evans v. *State Bank* (134 U. S., 330).

Where an appeal is allowed in open court, but no bond is then given, a citation is essential. No citation appears in the record.

> *Hewitt* v. *Filbert*, 116 U. S., 142, 144;
> *Sage* v. *Railroad Co.*, 96 U. S., 712, 715;
> *Credit Co.* v. *Ark. Cent. Ry.*, 128 U. S., 258 261.

The Trial Court had no Jurisdiction.

(*a*) *The plaintiff did not reside in the district of Porto Rico. Such residence was necessary under section 5 of the Tucker Act to give the trial court jurisdiction.*

A corporation can have no legal existence outside the boundary of the sovereignty by which it was created. It exists only in contemplation of law, and where that law ceases to operate can have no existence. It must dwell in the place of its creation and can not migrate to another sovereignty. Although it must live and have its being in that State only, it may be recognized in other places, and its residence in one State creates no insuperable objection to its power to contract in another.

> This statement has been often reaffirmed by this court, with some change of phrase, but always retaining the idea that the legal existence, the home, the domicil, the habitat, the residence, the citizenship of the corporation can only be in the State by

which it was created, although it may do business in other States whose laws permit it. (*Shaw* v. *Quincy Mining Company*, 145 U. S., 444, 450.)

(*b*) *Plaintiff's claim is not such as would entitle it to redress in a court of law, equity, or admiralty.*

Rights arising out of the violation of international law are not enforced by actions in court. Parties aggrieved as the result of such violations must seek redress through diplomatic channels. In *Ware* v. *Hylton* (3 Dall., 198), this subject is extensively discussed, and the conclusion reached is that, during a state of war, a plain violation of international law, as a result of which a citizen of a belligerent is injured, does not give him a right of action in the courts. The first section of the Tucker Act manifestly intended to limit actions against the Government to that class of claims cognizable in courts of law, equity, or admiralty, and not to create an entirely new set of rights not recognized in the courts prior to that time.

(*c*) *There was no contract, either express or implied, between the United States and the plaintiff—Any possible action would sound in tort.*

The plaintiff maintains that, under the principle of modern international law, private property belonging to a citizen of a hostile nation can not be taken except for necessary military purposes,

and that if taken in violation of law an implied contract arises to pay for the same.

Plaintiff was a citizen of a *hostile nation; no* express contract was made with him; and it appears manifest that no implied contract could have resulted from taking his property by force and arms. If any wrong cognizable in a court of law was done it was a tort.

In *Gooch* v. *United States* (15 Ct. Cls. R., 281, 287), speaking in reference to a claim based upon an alleged implied contract, the court said:

> The case rests wholly on the position that, an agent of the Treasury Department having taken the cotton of the claimant, and the cotton having been converted by another agent of the Department into money, which is in the Treasury, an implied promise arose on the part of the United States to pay her the proceeds of the cotton.
>
> There is no foundation for any such implication. The cotton was taken in Mississippi, one of the insurrectionary States, while a state of war still existed there. In the State in which it was taken, that state of war continued until April, 1866. Until that date Mississippi was, in law, enemy territory, and all residents thereof were enemies, and private property found there was enemy property and a legitimate subject of capture.

If plaintiff suffered as the result of a tort, he has no right of action under the Tucker Act, and he has failed to show either an express or implied contract upon which he is entitled to sue.

The Vessel was Enemy's Property upon the High Seas and Seizure Justifiable under International Law.

The vessel was rightly treated as property of a subject of the enemy upon the high seas and the seizure was justifiable. It was taken for Government use. The provision of section 4624, Revised Statutes, and articles 46–50, American Naval Code, render action by a prize court in such cases unnecessary for any purpose.

Such an adjudication to vest title in the captors is not required by international law, and the return of the vessel before condemnation ought not to be complained of. If the vessel had been destroyed its owner certainly could not have recovered its value.

The *Manila Prize Cases*, 188 U. S., 254, 271, 273, 278.
United States v. *Ross*, 1 Gall., 624.
Hall's Int. Law, secs. 143, 148, 150.
Halleck, Int. Law, p. 758, sec. 13.
Dana's Wheaton, sec. 388, note.
Wharton, Int. L. Dig., sec. 328.
Jecker et al. v. *Montgomery*, 18 How., 110, 123.
The Siren, 13 Wall., 389, 394.

Seizure and use justifiable on grounds of military necessity.

If the seizure was upon land, it was justifiable upon the ground of military necessity.

The general rule is that private property on land may be taken when it is directly useful for military purposes. It should not be seized for the mere sake

of gain or to increase the wealth of the country. The commanding general properly exercises discretion as to when its use is demanded because of military necessity, and no condemnation is necessary to vest title.

Mrs. Alexander's Cotton, 2 Wall., 404, 419.
Taylor v. *Nashville, etc., R. R. Co.*, 6 Coldw. (Tenn.), 646; 98 Am. Dec., 474, 478.
Oakes v. *United States*, 174 U. S., 778, 786.
Cook v. *Howard*, 13 Johns. (N. Y.), 275, 282.

General Orders, No. 101, quoted by counsel for appellants, seems to have no application to the present case. It was made for the government of the military authorities in *Cuba*. (Rept. of War Dept., 1898, vol. 1, pt. 1, p. 125.)

The military authorities in Porto Rico were acting under General Orders, No. 100, section 37 of which is in this language (Military Laws of U. S., p. 1079):

> 37. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.
>
> *This rule does not interfere with the right of the victorious invader* to tax the people or their property, to levy forced loans, to billet soldiers, or *to appropriate property, especially houses, lands, boats, or ships, and churches, for temporary and military uses.*

Any Possible Claim was Relinquished by the Treaty of Peace.

The treaty of peace between the United States and Spain, ratified in April, 1899, provided, Article VII (30 Stats. L., 1757)—

> The United States and Spain mutually *relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other government*, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.
>
> The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

The first part of this section fairly states the rule of international law which would control had no such express stipulation been made.

Halleck's Int. Law, p. 851.

Baker's Int. Law, p. 113.

Ware v. *Hylton*, 3 Dall., 198, 229.

If in the settlement of mutual demands by the treaty of peace Spain relinquished claims of her subjects, they must look to her alone for compensation. "That any government has the right to do this (relinquish claims of citizens), as it has the right to refuse war in protection of a wronged citizen, or to take other action which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion."

Gray, Admnr., v. *U. S.*, 21 Ct. Clms., 340, 392.

United States v. *Mining Co.*, 29 Ct. Clms., 432, 512.

In *Ware* v. *Hylton*, 3 Dallas, 198–229, Mr. Justice Chase, speaking for the court, said:

> I apprehend that the treaty of peace abolishes the subject of war, and that after peace is concluded neither the matter in dispute nor the conduct of either party during the war can ever be revived or brought into contest again. All violences, injuries, or damages sustained by the Government or people of either during the war are buried in oblivion; and all those things are implied by the very treaty of peace, and therefore not necessary to be expressed. Hence it follows that the restitution of, or compensation for, British property confiscated or extinguished during the war by any of the United States could only be provided for by the treaty of peace; and if there had been no provision respecting these subjects in the treaty *they could not be agitated after the treaty by the British Government, much less by her subjects, in courts of justice. If a nation, during a war, conducts herself contrary to the law of nations and no notice is taken of such conduct in the treaty of peace, it is thereby so far considered lawful, as never afterwards to be revived or to be a subject of complaint.*

Protocol only suspended hostilities.

By the protocol there was a mere suspension of hostilities (Art. VI). It was only a step in the effort to arrive at an agreement for peace. In effect, it was a truce. The object being temporary, everything in the end should be in the same position as at the beginning. The meaning of every such compact is that all things should remain as they were at the moment of its consummation.

1 Kent Comm., 159, 161.
Vattel, b. 3, ch. 16, secs. 233–238.
Taylor's Int. Law, sec. 513.

This vessel was taken before the truce was declared. Its retention during the existence of the truce was entirely proper. The Government by thus retaining it incurred no new obligation, and as no liability existed prior thereto plaintiff's claim is without merit.

The Government respectfully asks that the appeal be dismissed, or that the judgment of the lower court be affirmed.

J. C. McREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

O

Supreme Court of the United States.

No. 151.—October Term, 1903.

Ribas y Hijo, Appellant, vs. The United States. } Appeal from the District Court of the United States for the District of Porto Rico.

[May 16th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This action was brought against the United States by J. Ribas y Hijo, a Spanish corporation, to recover the sum of ten thousand dollars as the value of the use of a certain merchant vessel taken by the United States in the Port of Ponce, Porto Rico, when that city was captured by the United States Army and Navy on July 28th 1898.

The vessel was kept and used by the Quartermaster's Department of the Army until some time in April 1899 when the War Department ordered its return to the owner, if all claim for use or damage for detention should be waived. Such conditional return was refused by the captain who claimed to be a part owner and with his crew he left the vessel.

Subsequently the consignees of the vessel were notified that it was at their disposal; that the Government was about to discharge those having it in care; and they were requested to put some one in control of it. This they declined to do, and the vessel was abandoned and in August 1899 was wrecked in a hurricane.

The vessel was never in naval custody nor condemned as prize. When seized it was a Spanish vessel, carried the Spanish flag, and its owner, captain and crew were all Spanish subjects. It did not come within any of the declared exemptions from seizure set forth in the Proclamation of the President of April 26th 1898. 30 *Stat.* 1770. A claim filed in the War Department in February 1900 for its use was rejected.

Such being the facts found, the court below, upon final hearing, dismissed the action upon the general ground that the vessel was properly seized as enemy's property, and its use was by the war power for war purposes.

A rehearing was asked and was denied, the court saying: "A rehearing is asked upon the ground that the court has found as a matter of fact that the use continued until in April 1899, and, as the protocol, followed by the President's proclamation, was dated August 12th 1898, the complainants should recover on a *quantum meruit* the value of the use of the

vessel between those dates. This was a seizure in time of war, and not in time of peace. It was, as has been said, a special case arising from the necessary operation of war, and the war power of the Government concluded it was necessary to take and use the property. Even conceding that the seizure did not terminate all right of the Spanish owner in the property, or to any use of it, yet the protocol and proclamation did not end the war. The protocol worked a mere truce. The President had not the power to terminate the war by treaty without the advice or consent of the Senate of the United States. If a treaty be silent as to when it is to become effective, the weight of authority is that it does not become so until ratified, and this was not done until in April 1899, and the war did not end by treaty until then, and all the use made by the Government of the vessel was justified by the rules of law and international law without compensation."

1. By the 35th section of the act of Congress of April 12th 1900, *c.* 191, temporarily providing revenues and civil government for Porto Rico, it was declared that "writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; . ." As the value of the matter here in dispute exceeds the sum of five thousand dollars, and as the final judgment, in a like case in the Supreme Court of one of the Territories of the United States, could be re-examined here, we have jurisdiction of the present writ of error from the District Court of the United States for Porto Rico. 23 *Stat.* 443, *c.* 355; 31 *Stat.* 85, *c.* 191, §§ 34, 35; *Royal Insurance Co.* v. *Martin*, 192 *U. S.* 149.

2. This action, we have seen, was brought to recover the value of the use of a vessel belonging to Spanish subjects and taken by our Army and Navy during the war with Spain, and used by the Quartermaster's Department of the Army.

By the above act of April 12th 1900 the court below was given, "in addition to the ordinary jurisdiction of District Courts of the United States, jurisdiction of all cases cognizant in the Circuit Courts of the United States, and shall proceed in the same manner as a Circuit Court." 31 *Stat.* 85, *c.* 191, § 34. If, therefore, this action could have been brought in a Circuit Court of the United States, it was within the cognizance of the court below. We must, then, look to the act of March 3d 1889, commonly

known as the Tucker act, and which provides for the bringing of suits against the Government of the United States. 24 *Stat.* 505, *c.* 359.

By the first section of that act it is provided that the Court of Claims shall have jurisdiction to hear and determine "all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable. . ." The second section provides that "the District Courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the Circuit Courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars." The fifth section is in these words: "That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law."

The Government insists that the requirement in that act, that the petition shall be filed "in the district where the plaintiff resides," precludes a suit against the United States by any person, natural or corporate, residing out of the country. We express no opinion upon that question, as there are other grounds upon which we may satisfactorily rest our decision.

The present suit finds no sanction in the above act even if the plaintiff were not a foreign corporation. Its claim is not founded on the Constitution of the United States, or on any act of Congress, or on any regulation of an Executive Department. Nor can it be said to be founded on contract, express or implied. There is no element of contract in the case; for nothing was done by the United States, nor anything said by any of its officers, from which could be implied an agreement or obligation to pay for the use of the plaintiff's vessel. According to the established principles of public law, the owners of the vessel, being Spanish subjects, were to be deemed enemies, although not directly connected with military operations. The vessel was therefore to be deemed enemy's property. It was seized as

property of that kind, for purposes of war, and not for any purposes of gain. The case does not come within the principle announced in *United States* v. *Great Falls Mfg. Co.*, 112 *U. S.* 645, 656, where this court said that "the United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of claimant for public use, are under an obligation, imposed by the Constitution, to make compensation. The law will imply a promise to make the required compensation where property, to which the Government asserts no title, is taken pursuant to an act of Congress as private property to be applied for public uses. Such an implication being consistent with the constitutional duty of the Government, as well as with common justice, the claimant's cause of action is one that arises out of implied contract within the meaning of the statute which confers jurisdiction upon the Court of Claims of actions founded upon any contract, expressed or implied, with the Government of the United States." The seizure, which occurred while the war was flagrant, was an act of war occurring within the limits of military operations. The action, in its essence, is for the recovery of damages, but as the case is one sounding in tort, no suit for damages can be maintained under the statute against the United States. It is none the less a case sounding in tort because the claim is in form for the use of the vessel after actual hostilities were suspended by the protocol of August 12th 1898. A state of war did not in law cease until the ratification in April 1899 of the treaty of peace. "A truce or suspension of arms," says Kent, "does not terminate the war, but it is one of the *commercia belli* which suspends its operations. . . At the expiration of the truce, hostilities may recommence without any fresh declaration of war." 1 *Kent*, 159, 161. If the original seizure made a case sounding in tort, as it undoubtedly did, the transaction was not converted into one of implied contract because of the retention and use of the vessel pending negotiations for a treaty of peace. Besides, the treaty of peace between the two countries provided that "the United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war. The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article." This stipulation clearly embraces the claim of the plaintiff—its claim against the United States for indemnity having arisen prior to the exchange of ratifications of the treaty of peace with Spain.

We may add that even if the act of March 1877, standing alone, could be construed as authorizing a suit of this kind, the plaintiff must fail; for,

it is well settled that in case of a conflict between an act of Congress and a treaty—each being equally the supreme law of the land—the one last in date must prevail in the courts. *The Cherokee Tobacco*, 11 *Wall.* 616, 621; *Whitney* v. *Robertson*, 124 *U. S.* 190, 194; *United States* v. *Lee Yen Tai*, 187 *U. S.* 213, 221.

It results that the judgment below dismissing the action must be affirmed.

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.